

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

**SECURITIES AND EXCHANGE
COMMISSION,**

Case No. 2:15-cv-01350-JLR

Plaintiff,

**UNOPPOSED MOTION TO RELEASE
ESCROW FUNDS TO BINJIANG
OTHELLO & ORDER**

NOTED ON MOTION CALENDAR
August 3, 2018

PATH AMERICA, LLC; PATH AMERICA SNOCO LLC; PATH AMERICA FARMER'S MARKET, LP; PATH AMERICA KINGCO LLC; PATH AMERICA TOWER, LP; PATH TOWER SEATTLE, LP; POTALA TOWER SEATTLE, LLC; and LOBSANG DARGEY,

Defendants, and,

POTALA SHORELINE, LLC; POTALA VILLAGE KIRKLAND, LLC; DARGEY DEVELOPMENT, LLC; DARGEY ENTERPRISES, LLC; and PATH OTHELLO, LLC,

Relief Defendants.

UNOPPOSED MOTION

2 WHEREAS, Michael A. Grassmueck (the "Receiver"), the Court-appointed receiver
3 for Path America, LLC; Path America SnoCo, LLC; Path America Farmer's Market, LP; Path
4 America KingCo, LLC; Path America Tower, LP; Path Tower Seattle, LP; Potala Tower
5 Seattle, LLC; Potala Shoreline, LLC; Potala Village Kirkland, LLC, Dargey Holdings, LLC,
6 Dargey Development, LLC, Dargey Enterprises, LLC, and Path Farmers Market, LLC
7 (collectively, the "Receivership Entities" or "Entities"), hereby files this unopposed motion
8 ("Unopposed Motion") for an order permitting the release of funds held by the Receiver to
9 Binjiang Othello Corp. ("Binjiang Othello"), in partial satisfaction of a promissory note (the
10 "Note") granted by Path Othello, LLC ("Path Othello") to Binjiang Othello.

WHEREAS, Path Othello is a limited liability company formed for the purpose of acquiring an unimproved real property located in Seattle, Washington as described in a Real Estate Purchase and Sale Agreement, dated March 13, 2015, by and between the Housing Authority of the City of Seattle, d/b/a Seattle Housing Authority, and Path Othello (the “PSA”), and developing certain mixed-use buildings;

16 **WHEREAS**, on August 19, 2015, Binjiang Othello purchased a 27.5% limited
17 liability company membership interest in Path Othello for \$15 million (the “Interest”).
18 Dargey Holdings, LLC held the remaining 72.5% limited liability company membership
19 interest in the Company.

20 WHEREAS, On August 24, 2015, the United States Securities and Exchange
21 Commission (“SEC”) filed a civil action against certain affiliates of Path Othello (the “SEC
22 Action”), and on October 2, 2015, Path Othello was added to the SEC Action as a Relief
23 Defendant. Also on August 24, 2015, this Court issued a temporary restraining order against
24 certain Defendants and Relief Defendants including Lobsang Dargey, which, among other
25 actions, froze all accounts under the control of Mr. Dargey, including the accounts of Path
26 Othello. The freeze was subsequently continued and extended by an order dated October 7,
27 2015, granting the SEC’s motion for a preliminary injunction.

1 **WHEREAS**, on August 27, 2015, Seattle Housing Authority delivered a notice of
2 default to Path Othello under the PSA and certain other contracts, and demanded immediate
3 cure. By letter dated October 9, 2015, Seattle Housing Authority provided additional notice
4 of its contention that the PSA defaults listed in its notice of August 27, 2015 had not been
5 cured, and gave notice that it was refusing to extend the closing date for the PSA, and
6 intended to allow the PSA to expire according to its terms.

7 **WHEREAS**, on September 19, 2016, Path Othello and Binjiang Othello executed the
8 Path Othello Membership Investment Rescission Agreement ("Rescission Agreement")
9 rescinding Binjiang Othello's Interest in Path Othello. The Rescission Agreement provided
10 for the immediate return of \$13,396,948.13 to Binjiang Othello, and the execution of the Note
11 in the amount of \$1,603,051.87. The restructuring transaction of which the Rescission
12 Agreement was part was approved by the Court by orders dated July 15, 2016 (Docket No.
13 377) and September 20, 2016 (Docket No. 427). The Receiver believes that the Note remains
14 due and payable from Path Othello to Binjiang Othello, and that no payments of principal or
15 interest have been made on the Note.

16 **WHEREAS**, the PSA has expired by its own terms and the Seattle Housing Authority
17 wished to refund an escrow payment in the amount of \$270,000 plus interest (the "Escrow
18 Amount") made by Path Othello to the Seattle Housing Authority in connection with the
19 execution of the PSA.

20 **WHEREAS**, that Escrow Amount was transferred to the Receiver because Path
21 Othello no longer maintains an active bank account, and was subject to an agreement dated
22 January 12, 2017 between the escrow agent and the Receiver that the funds would only be
23 released by an agreement between Path Othello, Dargey, the SEC and the Receiver, or by
24 order of this Court.

25 **WHEREAS**, the Receiver does not possess any interest in the Escrow Amount
26 because Path Othello is not a Receivership entity. The Receiver deems it appropriate to
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1 transfer the Escrow Amount to Binjiang Othello in partial payment of the Note, and files this
2 Unopposed Motion to accomplish that transfer.

3 **WHEREAS**, pursuant to the Consent to Final Judgment dated March 1, 2017; Dargey
4 and Path Othello have relinquished all legal and equitable right, title, and interest to any of the
5 funds and assets of Path Othello. Although Dargey has no right to the Escrow Amount,
6 counsel for Dargey has expressly represented to the Receiver that Dargey has no objection to
7 the transfer of the Escrow Amount to Binjiang Othello in partial satisfaction of the Note.

8 **WHEREAS**, the SEC has expressly represented to the Receiver that it has no
9 opposition to the transfer of the Escrow Amount to Binjiang Othello in partial satisfaction of
10 the Note.

11 **THEREFORE**, the Receiver hereby respectfully requests that this Court approve the
12 release of the Escrow Amount by the Receiver to Binjiang Othello in partial satisfaction of the
13 Note.

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15 Dated: July 16, 2018

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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By: /s/ Michael R. Farrell

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David R. Zaro, Esq. #124334 (CA)
(Pro Hac Vice Granted Oct. 26, 2015)

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Michael R. Farrell, Esq. #173831 (CA)
(Pro Hac Vice Granted Nov. 6, 2015)

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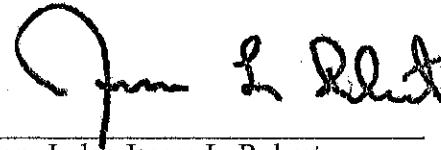
1 **PROPOSED ORDER**

2 The Court, having read the Unopposed Motion to Release Escrow Funds to Binjinag
3 Othello filed by Michael A. Grassmueck, court-appointed receiver for Defendants Path
4 America, LLC, Path America SnoCo, LLC, Path America Farmer's Market, LP, Path America
5 KingCo, LLC, Path America Tower, LP, Path Tower Seattle, LP, and Potala Tower Seattle,
6 LLC and Relief Defendants Potala Shoreline, LLC, Potala Village Kirkland, LLC, Dargey
7 Holdings, LLC, Dargey Development, LLC, Dargey Enterprises, LLC, and Path Farmers
8 Market, LLC, which seeks an order approving the release of the Escrow Amount held by the
9 Receiver to Binjiang Othello, and good cause appearing therefor, hereby **ORDERS** as
10 follows:

11 1. The Motion is GRANTED; and
12 2. The Receiver shall transfer the Escrow Amount to Binjiang Othello in partial
13 satisfaction of the Promissory Note between Path Othello and Binjiang Othello.

14 **IT IS SO ORDERED.**

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17 Dated: July 17, 2018



18 Hon. Judge James L. Robert,
United States District Court

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1 CERTIFICATE OF SERVICE

2 I hereby certify that on July 16, 2018, I caused the foregoing document to be
3 electronically filed with the Clerk of the Court using the CM/ECF system which will send
4 notification of the filing to all counsel of record.

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6 Dated: July 16, 2018

s/ Michael R. Farrell
7 Michael R. Farrell, Esq. #173831 (CA)
(*Pro Hac Vice Granted Nov. 6, 2015*)

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